IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2021

CORAM :
THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.7594 of 2021

H.Liyakath Ali .. Petitioner

Vs.

1.Canara Bank,
Regional Office,
New No.524, Old No.563/1,
Venkataramana Centre,
Teynampet, Chennai - 600 018.

2.The Authorised Officer,
Canara Bank, No.1,
Jawaharlal Nehru Salai,
Ekkatuthangal, Chennai - 600 032. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the second respondent to provide an account as to the appropriation of sale proceeds the proper adjustments forwards the legitimate dues and refund the excess amount available.

For Petitioner : Mr.E.Om Prakash
Senior Counsel
for M/s.Ramalingam and Associates

ORDER
(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner says that upon the petitioner's account turning non performing and the bank taking steps to sell the secured asset, the immovable property furnished by way of security has been sold and the entire dues of the secured creditor have been met with the consideration and the secured creditor acknowledged that there was an amount lying to the credit of the petitioner, but the relevant amount has not been made over to the petitioner.

2. It is the petitioner's further contention that though the petitioner was agreeable all along to ensure that the property was sold and an appropriate price was obtained, the

secured creditor resorted to making a request under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to obtain coercive orders to throw the petitioner out of possession and remove the petitioner's belongings from the property. The immediate complaint is that upon the petitioner seeking the petitioner's belongings that have been removed from the immovable property in question, the secured creditor bank has claimed that the goods are being stored at some place at a cost of Rs.4 lakh per month. The petitioner apprehends that the bank would purport to levy imaginary charges to eat away the credit that should have been available to the petitioner upon the sale of the secured asset and the appropriation of a part of the consideration to meet the bank's claim.

3. Even the present complaint is capable of being carried to the appropriate Debts Recovery Tribunal in view of the wide words of Section 17 of the said Act. At any rate, the Writ Court cannot go into the disputed questions of facts as to what articles may have been available at the time that the secured creditor obtained possession of the secured asset or as to what should have been the appropriate consideration for sale of the property and as to what exact amount should have been made over by the secured creditor to the petitioner after adjusting the consideration received from the sale of the property. Such involved questions need to be addressed in a full-fledged action which is not possible in summary proceedings conducted on affidavit evidence.

4. Accordingly, W.P.No.7594 of 2021 is disposed of without going into the merits of the petitioner's claim and leaving the petitioner free to approach the appropriate Debts Recovery Tribunal in accordance with law. In the unlikely event that the petitioner's plea is not entertained by the Debts Recovery Tribunal on the ground of limitation, the only remedy of the petitioner would be to bring a civil action in damages. There will be no order as to costs. Consequently, W.M.P.No.8112 of 2021 is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

bbr
+2cc to Mr.Ramalingam Associates, Advocate, S.R.No. 19041

W.P.No.7594 of 2021

SMI(CO)
GN(04/05/2021)